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Japan: working paper on conditions of exploration and exploitation

This working paper is intended to outline the preliminary position of the Japanese delegation on a number of essential points concerning conditions of exploration and exploitation which, in our view, should be included as an integral part in this Convention as an appendix or other appropriate form.

The Japanese delegation is aware of certain difficulties involved in drafting, in the Law of the Sea Conference, a complete set of rules for conditions of exploration and exploitation. The conditions contained herein are therefore not exhaustive.

Basic rules and regulations regarding the conditions of exploration and exploitation

I. Activities to be regulated

All activities of exploration and exploitation shall be carried out through either registration or contracts with the Authority in conformity with the provisions of this Convention and the rules and regulations contained herein (hereinafter referred to as the "Rules"). Such activities shall be divided into three phases:

- (i) General survey
- (ii) Development activities
 - (a) Evaluation
 - (b) Exploitation

II. Eligible entities

Only the following entities may register or conclude contracts with the Authority for the purpose of conducting general survey, evaluation and exploitation:

- (a) Contracting Parties,
- (b) group of Contracting Parties, and
- [(c) natural or juridical persons of such a Party or Parties]

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III. Registration for general survey

1. Definition of general survey

General survey is an activity carried out prior to evaluation for the purpose of locating and identifying potential mineral deposits. Such activities include bottom sampling by means of dredging and drilling up to the depth of 1 metres from the surface.

2. Procedure for registration

An eligible entity desiring to conduct general survey shall submit to the Authority a written statement which shall specify inter alia:

- (a) mineral or minerals which are the object of general survey,
- (b) the approximate location of the area in which the general survey is to be conducted,
- (c) general description of the activities, and
- (d) expected duration of the work.

3. Registration shall give the registering entity non-exclusive right to conduct general survey for a period of two years from the date of registration. The right shall be renewed for additional periods of two years upon notification to the Authority of the intention of renewal.

4. The registering Contracting Party or Parties may delegate its rights and obligations derived from the registration to its natural or juridical persons /or such persons of other Contracting Parties/.

The delegating States shall be responsible to ensure that the activities of such natural or juridical persons be carried out in conformity with the provisions set forth in this Convention, these Rules and the rules to be made by the Authority pursuant to this Convention.

IV. Contract for development

1. Definition of development

- (i) "Evaluation" is activities which follow general survey and which have as their objective to ascertain the total quantity, grades, population or concentration of mineral deposits in a contract area, as well as environmental and other factors affecting remunerativeness of mining.
- (ii) "Exploitation" is extraction of minerals for commercial purposes whether or not there is profit.

1/ The exact depth to be determined by the Authority on the basis of expert opinions and taking into account the need of protecting the marine environment. /...

2. Contractors

- (i) Evaluation and exploitation shall be conducted only under contracts between the Authority and the eligible entities.

(Such entities which have concluded contracts with the Authority shall hereinafter be referred to as "Contractors".)

- (ii) The recipient Contracting Party or Parties may delegate the rights and obligations under the contract with the Authority to its natural or juridical persons or such persons of other Contracting Parties (hereinafter referred to as "sub-contractors").

The delegating States shall be responsible to ensure that the activities of such natural or juridical persons be carried out in conformity with the provisions set forth in this Convention, these Rules and the rules to be made by the Authority pursuant to this Convention.

3. Categories of minerals

Contracts shall be concluded with respect to the following categories of minerals:

- (i) manganese nodules,
- (ii) other hard minerals found on the surface and subsoil of the Area, and
- (iii) minerals in the subsoil of the Area in fluid or gaseous state such as oil and natural gas.

4. Nature of rights under development contracts

- (i) The rights of a Contractor under a development contract shall be exclusive with respect to the category of mineral or minerals which is the object of the contract within the contract area.
- (ii) The rights of a sub-contractor may be transferred, subject to notification to the Authority to any other natural or juridical person of the delegating Contracting Parties or group of delegating Contracting Parties.

5. Qualifications of proposers

An entity proposing to conclude a development contract with the Authority shall satisfy the following conditions:

- (i) technical and financial competence to be determined by the rules to be adopted by the Authority pursuant to this Convention. The Authority may require of the proposing entity a guarantee as an evidence of its financial competence.

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- (ii) (in the case of an exploitation contract)

The proposer must be conducting or have conducted evaluation activities under a contract.

6. Contract area

- (i) The International Sea-Bed Area shall be divided into areas to be defined by co-ordinates of latitude and longitude. Each area shall have, to the extent possible, equal size and a serial number.
- (ii) The size of a contract area shall be for

minerals of category	(i)	square km	1/
"	"	"	(ii) square km
"	"	"	(iii) square km

7. Procedure for award of contracts

- (i) An eligible entity desiring to conclude a development contract shall submit a proposal of contract in a written form which shall specify, inter alia:
- (a) the category of mineral to be developed,
- (b) the serial number of the area to be covered,
- (c) (where a Contracting Party intends to delegate its rights under the contract to its natural or juridical persons /or to those of other Contracting Parties/ the name and qualification of such persons).
- (ii) Subject to the provisions of paragraphs 8 and 9 below, the Authority shall conclude a contract with the proposer when his proposal has been made in strict conformity with the provisions of these Rules and of the rules to be made by the Authority pursuant to this Convention. However, no contract of exploitation shall be awarded with respect to a mineral or minerals in the same category in a contract area for which a contract of evaluation has been awarded and is still in force.

8. Selection of contractor in case of competing proposals

- (i) A proposal received shall be kept sealed by the Authority for /one/ month. At the end of that period, the proposal shall be opened. If no competing proposal is received and if the Authority is satisfied that the proposal concerned meets the conditions of these Rules and relevant rules to be made by the Authority pursuant to this Convention, the Authority shall conclude a contract with that entity within /three/ months.

1/ The size shall be determined by the Authority taking into account expert opinions. 60,000 square km is considered as an optimum size for the mineral of category (i).

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- (ii) In cases where more than one proposal is submitted by the end of the period of /one/ month with respect to the same category of a mineral or minerals in the same contract area, there shall be consultations among the proposers concerned with a view to reconciling the competing proposals.
- (iii) If no agreement is reached within /five/ months from the date of the opening, the Authority shall select the Contractor taking into account the following factors:
 - (a) number of the contracts awarded to the proposers so that fair and equitable opportunity be accorded to all prospective contractors,
 - (b) needs of mineral resources imports of the Contracting Parties in particular such needs of developing Contracting Parties,
- (iv) If selection cannot be made in accordance with subparagraph (iii) above, there shall be an auction. The contract shall be awarded to the highest bidder.

9. Procedure during the first phase of the establishment of the Authority of this Convention

No contract shall be awarded by the Authority during the /three/ months after the establishment of the Authority.

10. Duration and renewal of contract

- (i) Unless otherwise provided for in these Rules, the contract shall be valid:
 - (a) for an evaluation contract, /fifteen/ years and
 - (b) for an exploitation contract, /twenty/ years.
- (ii) An exploitation contract shall be renewed for additional periods of /ten/ years at the request of the Contractor.

11. Transition from evaluation to exploitation

Upon attainment of commercial production 1/ the Contractor of an evaluation contract shall propose to the Authority to conclude a contract of exploitation. The Authority shall award the contract within /three/ weeks.

V. Obligations

1. Compliance with these Rules and other standards

- (i) Entities conducting general survey, evaluation and exploitation shall comply with the terms and conditions of these Rules and the provisions of the rules to be adopted by the Authority pursuant to this Convention.

1/ To be defined in terms of the quantity of ores to be ~~mined~~ per year.

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(ii) These entities shall also comply with other international standards relating to:

- (a) operational standards
- (b) navigational safety
- (c) preservation of marine environment
- (d) installations and devices

2. Relinquishment

Upon attainment of commercial production, the Contractor shall renounce [one half] of the contract area. The relinquishment shall be made in such a way as not to prevent full utilization of the mineral resources of the renounced portion.

3. Work requirements

- (i) During the evaluation stage the Contractor shall expend such amounts as are specified in the rules to be adopted by the Authority.
- (ii) The amount shall be determined at a level which will discourage the freezing of contract area for speculative or other purposes.

VI. Participation of nationals of developing countries

- (i) Promotion of the employment of qualified personnel from developing countries
- (ii) Training of personnel of developing countries including the establishment of training centres.

VII. Financial arrangement

(To be elaborated)

VIII. Measures to ensure compliance

1. Inspection

- (i) Objective of inspection

Inspection may be conducted by the Authority with a view to ascertaining compliance with the obligations under article V of these Rules.

The Authority may also conduct inspection for the purpose of verifying the exact quantity of minerals produced by the Contractor.

In case the rights of Contracting Parties under the development contract are delegated under article IV, such Parties shall be responsible for inspection.

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(ii) Modalities of inspection

Inspection shall be carried out by any of the following means:

- (a) study of the reports of the Contractor including work plans
- (b) on-the-spot inspection of mining sites.

2. Suspension and termination of contracts

- (i) In conformity with the provisions of articles on settlement of disputes of this Convention, the Authority may suspend or terminate the contract if the Contractor is found to have violated the terms and conditions of the contract, these Rules and the rules to be adopted by the Authority pursuant to this Convention.

(ii) Force majeure

(To be elaborated)

3. Compensation of damage

(i) Liability

Entities shall be liable for damage caused by their activities of general survey, evaluation and exploitation to other users of the marine environment. In case a Contracting Party delegated its rights and obligations to natural or juridical persons in accordance with the provisions of articles III and IV, such natural or juridical persons shall be liable for damage.

(ii) Pollution damage

If damage is caused by pollution arising from the activities of entities conducting general survey, evaluation and exploitation, such entities shall be absolutely liable for such damage. However, in the case of delegation of the rights and obligations under articles III and IV, the operator shall be absolutely liable for such damage.

(iii) Insurance

(To be elaborated)

IX. Settlement of disputes

(To be elaborated)
